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Reasons for decision

Mr. Jonathan Bradford,

applicant,

and

National Automobile, Aerospace, Transportation
and General Workers Union of Canada (CAW-
Canada),

certified bargaining agent.

Board File: 29594-C

Neutral Citation: 2013 CIRB 696

September 27, 2013

The Canada Industrial Relations Board (the Board) was composed of Mr. William G. McMurray, Vice-Chairperson, and Messrs. André Lecavalier and John Bowman, Members.

This matter was heard by the Board in Edmonton, Alberta, on May 7 and 8, 2013.

Appearances

Mr. Albertos Polizogopoulos, for Mr. Jonathan Bradford;

Ms. Piper Henderson, for the National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada).

These reasons for decision were written by Mr. John Bowman, Member.

I. Introduction

[1] Mr. Jonathan Bradford, the applicant, has been employed as an air traffic controller in Edmonton, Alberta since May, 2010. The National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (CAW or the union), is certified to represent the bargaining unit where the applicant works. His employer is NAV CANADA.

[2] On August 24, 2012, Mr. Bradford filed an application for a religious exemption from payment of union dues and union membership, pursuant to section 70(2) of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*). Since his employment began at NAV CANADA, the applicant has been paying dues to the union and is required to be a member of the union, further to certain provisions in the collective agreement between the parties.

II. Background

[3] The applicant grew up in a religious household and attended church three times a week throughout his childhood. He described his religious beliefs as Protestant Reformed Christian. During the years between ages 17 and 21, when he was living in Ontario, the applicant worked in a unionized grocery store and did not seek any exemption from union membership or dues payments at that time. In 1996, he stopped going to church and "put his faith on the shelf."

[4] Mr. Bradford began his career as an air traffic controller when he was hired in May, 2010. After completing the training requirements for the job, he became a fully qualified air traffic controller on September 30, 2010. He became a member of the union and paid dues to the union as required under the collective agreement between the CAW and NAV CANADA.

[5] In May of 2011, the applicant returned to his religious faith. He testified that there was no one event that triggered his return to the church, but that small things caused him to look at his life, and he concluded that his life "wasn't where it should have been." The applicant was not a member of a particular church during this period, but he did attend various churches trying to find one that was the right "fit" for him.

[6] In June of 2012, a co-worker of the applicant, Mr. John Tomkinson, told him that the CAW had recently taken some actions in support of the pro-choice movement. The CAW had issued a press release and publicly supported some women's organizations who were protesting a cross-country caravan of anti-abortion activists. Mr. Tomkinson was a shop steward in the workplace who periodically had discussions on religious issues with the applicant. While Mr. Tomkinson had a different religious affiliation than the applicant (he was Roman Catholic), he and the applicant held similar views on the issue of abortion, and both were upset at the union's activities.

[7] On June 26, 2012, the applicant sent an email to the President of the CAW, Mr. Ken Lewenza, protesting the union's actions regarding the abortion issue. The email included the following paragraphs:

I can only say, I find this completely unacceptable. Basically out of nowhere, I have now been forced to be financially supporting the advocacy of child sacrifice. This is intolerable.

This is not why I pay union dues. I pay into a union such that we employees can provide a united front in dealing with the company we work for, to ensure fair and equitable treatment. I pay union dues for the union to deal with the company, and really nothing else. I do NOT pay union dues for the union to take make (*sic*) public stands on issues that have no effect on my employment, including political, religious or social issues.

[8] On June 28, 2012 the applicant received a reply email from the President of the CAW thanking him for expressing his views, but advising that the union would continue to speak out on such issues in the future. The applicant was advised in the email that the union had not provided financial contributions to the pro-choice movement. The applicant replied to this email the following day and again indicated his strong views on the abortion issue. In the final paragraph of that email, he wrote the following:

Ken, on a personal level, from me to you, please consider what you are doing. Advocating for the right to kill unborn children is no different than taking a knife to the throat of a newborn yourself. It is evil, it is horrific, it is sinful, and you will need to answer for such immorality before God. Please think about that.

[9] In the same June 29 email, the applicant advised the union that he would be "working actively to ensure that our local 5454 separates from the CAW as quickly as possible."

[10] On July 27, 2012, Mr. Bradford filed an application with the Alberta Labour Relations Board (ALRB), asking that his union dues be redirected for religious reasons, further to section 29 of the *Alberta Labour Relations Code*. His application did not seek exemption from union membership; only payment of union dues. The reasons for the request related entirely to the union's public positions on the issue of abortion. After citing a number of Biblical passages in his application to the ALRB, the applicant wrote:

As a result, I can not (*sic*) support the killing of unborn children, nor can I provide financial resources to further the cause of those who want to kill unborn children.

Recently, my union, the CAW, has taken a public stance on this issue, supporting the killing of unborn children. It has taken the position that we collectively as a union support this. I find that unacceptable. They have also used union finances and resources to support the cause of killing unborn children.

[11] On the same day that he filed his application with the ALRB, Mr. Bradford was advised by an official from that Board that he had filed his application in the wrong forum, and that the proper forum for his application would be the Board.

[12] During the period from late July into August, 2012, the applicant undertook to research various legal and religious issues, including the processes of the Board regarding religious exemption. The complainant did not testify in detail about what legal cases, websites or other documents he looked at. He stated that he did review the decision of the Supreme Court of Canada, *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211 (*Lavigne*), and understood from that case that unions had a legal right to take public positions on social, political and moral issues. He testified that until then, he thought that it was improper for a union to undertake such activities.

[13] The only other specific document that the applicant referred to in his testimony regarding his research, was a religious pamphlet titled "Labor Union Membership in the Light of Scripture." While the document was referred to as the official position of the Protestant Reformed church on the issue of union membership, no evidence was led to support this. In fact, the pamphlet is a speech made by a "Professor of Dogmatics" from a seminary in Lansing, Illinois in the United States. The speech is a mixture of quotations from the Bible and the political views of the author, indicating what he thinks the position of the church should be on the issue of union membership. A typical excerpt from the pamphlet follows:

Every member of the union, whether he participates in the violence or not, whether he wholeheartedly approves or is upset by the violence, is responsible—fully responsible before God—for the union's violence, so that in the day of judgment he will have to account for it. He willingly joined an organization committed to rebellion against God-ordained authority. By his membership and dues, if not by walking the picket line, he supported an organization that forces the owner to submit to the will of the workers, that destroys property, and that injures and kills those who oppose it.

[14] The applicant testified that this document "confirmed" the views that he had come to over the previous few weeks and showed him that "others who hold the same beliefs that I do interpret the Bible in the same way." The applicant used some of the same passages from the Bible that are quoted in the paper, when he eventually filed his application with the Board.

[15] The applicant testified that prior to filing his application to the Board, he spoke to family members and sought their input on the issue of unions and religious belief. He spoke to his brother, who is a pastor, but his brother had never been a union member and was not sure what he would do if he was in the applicant's position. He also received input from his father, who holds similar religious beliefs. His father was a union member for over forty years, and had not sought or obtained any exemption from union membership or payment of union dues. His father did not agree with this theological viewpoint. In a letter sent to the applicant in November of 2012, he suggested that he was able to be a union member without making the union "my idol," and was still able to maintain his religious beliefs.

[16] On August 24, 2012, Mr. Bradford filed his application with the Board, requesting exemption from both the payment of union dues and union membership. In the application, Mr. Bradford described his communication with the CAW regarding the abortion issue. Following these communications, the applicant did further research and discovered that unions have the legal right to make policy statements on social and moral issues on behalf of their membership. As a result, the applicant stated that he had "no choice" but to object to membership in any union.

[17] In his evidence, the applicant acknowledged that his application to the Board differed greatly from the previous application a few weeks earlier to the ALRB. He stated that his views changed after he discovered the rights that unions had and that previously he was "naive about what unions could do." After reviewing the religious pamphlet referred to previously, he concluded that he could not be a member of any union and provided two reasons for his belief.

The first reason is that by being a union member he is "yoked" or bound to other people who were non-believers. The second reason is that unions place the focus on representing the employees, while as a Christian he must submit to the employer's God-given authority. He works for God first, then the employer, and then himself. He testified that unions put the employees first, and the employer second, which is contrary to biblical teachings.

[18] The applicant testified that in January, 2013 he began regular attendance at Grace Life Church. He indicated that he planned to attend the necessary classes to become a member of the church. He testified that he chose this particular church after researching various churches because it had a more detailed description of its beliefs, which he reviewed on the church website, and that he agreed with everything in those beliefs. Under cross-examination, the applicant stated that there was no church policy on the website regarding union membership or payment of union dues.

[19] The applicant testified that if his application to the Board is dismissed, he would look at his options, including the possibility of an appeal. He stated that remaining a member of the union was "not an option" and that he would expect that his employment would be terminated if he terminated his union membership.

III. Positions of the Parties

A. The Applicant

[20] Counsel for the applicant submitted that Mr. Bradford met all of the Board's criteria necessary to receive an exemption from union membership and the payment of dues. He objects to membership in all trade unions. He does not rely on any specific tenets of a church and, in fact, the church he belongs to does not have policies against union membership. His objection to union membership and dues payment is based on his religious beliefs, which "progressed" from the time he filed his application to the ALRB because he became aware of what unions were allowed to do legally. That is why he changed his request from an application to be exempted from payment of union dues to an application to be exempted from both union dues and union membership.

[21] Counsel submitted that the applicant was honest and credible in his testimony before the Board and that the Board should find that he is sincere in his religious beliefs and that they were not rationalized to meet the requirements of the *Code*. Counsel noted that he was not retained as counsel for the complainant until well after the application was filed indicating that the applicant did not receive any legal advice prior to filing the application. It was further submitted that the applicant has shown that there will be serious consequences if the Board denies the application. He will not continue to remain a member of the union, and will ultimately sacrifice his employment, and possibly his career, if he does not get the requested exemption.

[22] Counsel submitted that the true issue for the Board to decide is whether or not the applicant is sincere in his beliefs. If the Board finds that his religious beliefs are sincere, then the application should be allowed.

B. The Union

[23] Counsel for the union agreed on what the legal tests are for exemption from payment of union dues and union membership under section 70(2) of the *Code*. In considering whether the religious beliefs of the applicant are sincere and have not been rationalized to meet the tests under the *Code*, the Board must look at whether there is a fundamental conflict between the religious beliefs of the applicant and his union membership and payment of union dues.

[24] Counsel for the union pointed out that prior to filing his application with the ALRB, the applicant did not object to all aspects of union membership, and limited his concern to the union's activities around the pro-choice issue. The applicant did not seek exclusion from union membership in his application to the ALRB. While the applicant testified that he changed his position on this issue after finding out through his research that unions were legitimately able to raise social, political and moral issues, this does not amount to a conflict with his religious beliefs. When he filed the ALRB application, he already knew that the union was advocating on a moral position that he did not agree with, yet he did not seek an exemption from membership. Ultimately, the issue raised by the applicant before the ALRB was about how union resources were being spent, which does not indicate that union membership was incompatible with his religious beliefs.

[25] Counsel for the union noted that the change in the applicant's beliefs took place over a relatively short period between July 27 and August 24, 2012. Counsel suggested that the applicant would have realized before filing his application with the Board that if he based his application solely on his opposition to the union's pro-choice activities, his application would not be granted. Given the short period of time during which the applicant's religious beliefs underwent a significant change, the Board must consider the likelihood that these beliefs were rationalized in order to meet the *Code*'s requirements.

IV. Analysis and Decision

[26] This is an application for exemption from union membership and payment of union dues, further to section 70(2) of the *Code*, which reads:

70.(2) Where the Board is satisfied that an employee, because of their religious conviction or beliefs, objects to joining a trade union or to paying regular union dues to a trade union, the Board may order that the provision in a collective agreement requiring, as a condition of employment, membership in a trade union or requiring the payment of regular union dues to a trade union does not apply to that employee so long as an amount equal to the amount of the regular union dues is paid by the employee, either directly or by way of deduction from their wages, to a registered charity mutually agreed on by the employee and the trade union.

[27] In interpreting this section of the *Code*, the Board has set out five criteria that should be applied. The first four criteria were established in *Barker* (1986), 66 di 91; 13 CLRBR (NS) 28; and 86 CLLC 16,031 (CLRB no. 576), while the fifth was subsequently added in *Wiebe* (1987), 70 di 89; and 18 CLRBR (NS) 241; and 87 CLLC 16,032 (CLRB no. 632). They are:

1. The applicant must object to all trade unions and not one particular union.
2. The applicant does not have to rely on a specific tenet of a particular religion or church.
3. The Board must make an objective inquiry into the nature of the applicant's beliefs to determine whether they relate to the Divine, or man's perceived relationship to the Divine, as opposed to man-made institutions.
4. The applicant must convince the Board that he is sincere and has not rationalized his objections to the union on religious grounds after he was made aware of the provisions of the *Code*.

5. The Board must assess the probable consequences to the applicant if the application is not granted, including whether the applicant would be placed in such a conflict position if the application was denied that he would no longer be able to continue in his employment.

[28] The parties agree that the above criteria are the ones which the Board applies in determining applications under section 70(2) of the *Code*. While the Board has reviewed the decisions of the various Boards and Courts that were submitted by the parties, given the agreement of the parties on the criteria to be applied, it is not necessary to refer extensively to these other cases.

[29] As well, these cases turn almost entirely on the Board's assessment of the beliefs of the applicant in each case. These applications are difficult and unusual for the Board as they require the panel to assess the beliefs of the individual applicant and to make a judgement not only on whether the applicant's religious beliefs are genuine and sincerely held, but also whether they are religious in nature and incompatible with membership and/or payment of dues to a trade union. As the Board stated, "[r]eligion is such a personal matter and it is often difficult to gauge a person's sincerity. Often, the line between religious beliefs and moral, social or political views is blurred" (*Gordon* (1988), 74 di 84; and 3 CLRBR (2d) 245 (CLRB no. 695) at pages 90; and 251). This is why the Board normally holds a hearing on such applications, so that the Board may hear and see the applicant testify before it regarding the nature and sincerity of his religious beliefs.

[30] After hearing the evidence in this matter, the Board has concluded that while the applicant is a religious man who undoubtedly holds strong views on religion, including on the issue of abortion, he has not convinced the Board that he has met the fourth criterion, namely, that he has not rationalized his objections to unions on religious grounds after being made aware of the *Code* provisions.

[31] As indicated, for an application under section 70(2) to succeed, the objection must be to all trade unions and not one particular union. This means that the nature of the religious beliefs and the objection must be to trade unionism in general and the principles of collective bargaining, as opposed to the actions or activities of a particular trade union and/or its policies. As such, an objection to a union's policy or public stance on the abortion issue has been found to be too remote from the purposes and activities of a trade union and the role of a bargaining agent in the

workplace to ground an exemption from union membership and payment of dues (*Doyle* (1993), 91 di 26; and 93 CLLC 16,028 (CLRB no. 990); and *Carroll*, June 23, 1989 (LD 731)).

[32] The applicant testified that the reasons why he now believes he cannot belong to any union are because he does not want to be "yoked" with non-believers in a common organization, and he does not agree with the concept of the union putting the employees' interests first ahead of or against those of the employer. However, the applicant indicated that these religious convictions or tenets have long been held by him, despite his having been a union member for several years and once before, many years ago. His religious convictions and union membership and payment of dues were not incompatible for him in the past. He had never before sought exemption from paying dues or from membership. Rather, he described in his submissions his efforts to submit to the authority of the employer, while a union member. For example, he described how he would always try to cover a sick call or extend a shift when management asked, and would not complain when vacation requests were denied or file grievances about disparate working conditions. He also described how he opposed a strike due to his religious conviction that an employee should not refuse to do work that he has been hired to perform.

[33] Accordingly, these are not new aspects of his religion or his religious beliefs that have come to create a conflict for the applicant. Rather, he has long held such religious beliefs, yet previously found ways to be true to his religious convictions within a unionized environment and remain a dues paying union member.

[34] It is undisputed that the genesis of the applicant's first application to the ALRB for a religious exemption to the payment of union dues was his discovery that the union was actively supporting the pro-choice side on the issue of abortion. It is clear from the applicant's correspondence with the President of the union in June of 2012 that he has deeply-held views on this issue, and was very upset with the union for taking a position on the subject. The correspondence with the union also demonstrated that the applicant did not have an issue at the time with the union acting on behalf of the employees regarding workplace issues; in fact, his suggested solution was merely to have his local separate from the CAW.

[35] After being advised that he had filed the application in the wrong jurisdiction, the applicant filed his application with this Board in August of 2012. The application to the Board was very different. The applicant now sought an exemption from union membership as well as payment of union dues, and now stated that he was opposed to membership in any trade union. He attributed this change in his position to a progression of his religious views, resulting from some research he had done on religious and legal issues. Although this was a key part of the applicant's case, the details of this research were sparse.

[36] The only specific documents he spoke of, to account for the change in his application and the progression of his religious views, were the religious pamphlet from the Professor of Dogmatics referred to earlier, and the *Lavigne, supra* decision of the Supreme Court of Canada. However, the applicant testified that the pamphlet only confirmed the religious beliefs that he already held and that he was previously aware of the biblical passages that were quoted in the pamphlet. Thus, the only really new information and thus the real source of the progression in his religious beliefs and the significant change in the nature of the application filed before this Board from that filed with the ALRB, was that he learned from reading the *Lavigne, supra* case that unions had a legal right to take positions on social, political and moral issues.

[37] The Board has some difficulty accepting that the applicant's religious beliefs progressed over a three-week period of research to the point where his beliefs are no longer able to be reconciled with union membership. He has not convinced the Board that the union's public activities in support of the pro-choice movement, which go against his religious views, do not remain the true underlying cause of the applicant's objection to payment of union dues. Having then read the *Lavigne, supra* decision, and realizing that what he thought was improper activity on the part of trade unions is in fact legal and legitimate social activity, the applicant was undoubtedly upset and dismayed. However, the fact that he has learned that unions have more power, authority and legal rights than he initially thought, may make him less tolerant of certain union activity, especially their role within the public debate on social, political and moral issues. This does not, in the Board's view, fundamentally change the basic relationship between his religious convictions and the concept of trade unionism in general, a relationship that he was previously able to reconcile.

[38] It is evident from his application that, as part of the applicant's research, he looked into the Board's decisions on this issue and the criteria required by the Board in order to be successful in making an application under section 70(2) of the *Code*. Even a cursory review of the Board's requirements would have been enough to show that an application for an exemption based solely on his disagreement with the union's policies on abortion would not likely have been successful. The result was that the applicant filed this much broader application. In the Board's view, the more probable explanation for the change in the two applications is that the applicant rationalized his religious beliefs in order to satisfy the Board's criteria to obtain an exemption from union membership and the payment of union dues pursuant to section 70(2) of the *Code*. This conclusion is supported by the fact that the church the applicant ultimately chose to become a member of, as representing the best fit for him in terms of similar beliefs, did not appear to have any policy regarding union membership or payment of union dues.

[39] The Board has been given considerable discretion in applying this provision of the *Code* and its authority to grant an exemption from union membership and paying union dues is not to be exercised lightly. This is because the desire to respect individual religious beliefs must be balanced against the legislative objectives of the *Code*. Parliament has recognized the need for union security as a means for a trade union to maintain its strength and solidarity, enabling it to more effectively represent its bargaining unit employees and press for better terms and conditions of employment. Dues check-off provisions are a recognition that those who benefit from the services and protection of a union and collective agreement should bear their fair share of the costs associated with those benefits. These principles should be over-ridden only in exceptional circumstances. This cautionary note was repeated in *Gordon, supra*, as follows:

...The mere fact that someone is deeply religious does not satisfy section 162(2) [now section 70(2)] of the *Code*. Parliament has, as a matter of public policy, enacted legislation permitting employers and trade unions to agree to provisions in collective agreements requiring persons to join trade unions as a condition of employment. The payment of union dues is also a benefit to society as a whole in the eyes of the legislators.

Accordingly, the Board must be extremely cautious that applicants who request exemption from these provisions in collective agreements truly qualify on the basis of their religious convictions.

(pages 87-88; and 248-249)

[40] And finally, the Board concluded:

Taking everything into account, the Board does have serious doubts about the true foundation of Mr. Gordon's desires to opt out of union membership and from paying union dues to CUPW. The Board is of the view that when there are such doubts in the minds of the adjudicators, the doubt should be resolved in favour of the legislative plan adopted by Parliament. ...

(pages 91; and 252)

[41] In the present case, for the reasons expressed above, the Board has similar doubts about the true foundation of the applicant's desire to opt out of union membership and payment of union dues. The Board has not been satisfied that his reasons do not remain grounded in his objection, first to the CAW's public stance on the abortion issue and its commitment of resources toward the pro-choice movement, and then more generally to the prospect of continuing to pay dues to an organization that can, does and likely will continue to take public stances on social, political and moral issues that may conflict with his own. Realizing that this reasoning alone may not get him the exemption he was seeking, the applicant rationalized his religious views in an effort to meet the Board's criteria. Accordingly, the Board is not convinced that the applicant has met the requisite criteria or should exercise its discretion to grant an exemption in this case. However, as noted in *Lavigne, supra* (page 281), payment of union dues does not inhibit a union member from expressing contrary views to those expressed by the union, and the expression of any views by the union is not "the voice of one and all in the bargaining unit."

[42] For the reasons as set out above, the Board hereby dismisses the application under section 70(2) of the *Code* for a religious exemption to union membership and payment of union dues.

William G. McMurray
Vice-Chairperson

André Lecavalier
Member

John Bowman
Member